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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,891	06/17/2005	Johnathan A Napier	13478-00001-US	7537
23416 7590 04/11/2008 CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899				
EXAMINER ZHENG, LI				
ART UNIT 1638		PAPER NUMBER		
MAIL DATE 04/11/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/539,891

**Applicant(s)**

NAPIER ET AL.

**Examiner**

LI ZHENG

**Art Unit**

1638

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-5,7-9, 26.  
Claim(s) withdrawn from consideration: 10-25.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Elizabeth F. McElwain/  
Primary Examiner, Art Unit 1638

Continuation of 11, does NOT place the application in condition for allowance because:

1. Claims 1-5 and 7-9 remain and claim 26 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, for the reasons of record stated in the Office action mailed January 23, 2008. Applicants traverse in the paper filed March 20, 2007. Applicants' arguments have been fully considered but were not found persuasive.

Applicants present similar arguments to those in the response filed 11/9/07, therefore for the similar reasons as discussed in the previous office action, the rejection is maintained.

Further, Applicants argue that the present application directs to a process rather than the nucleotide sequence that are used for practicing the claimed process and that a particular nucleic acid is not essential to the claimed method (response, page 5, last paragraph and page 6, 1<sup>st</sup> paragraph). However, the nucleotide sequences used in the process still needs to meet the written description requirement. As discussed previously, however, only very limited number of genes encoding delta-5- and delta-8-desaturases are disclosed in the prior art and they are not considered be representative of the genus. Further, delta-9-elongase is not well known in the art at the time of the instant invention. Therefore, it is concluded that Applicants are not in possession of a method of using any delta-5-, delta-8-desaturases and delta-9-elongases.

2. Claims 1-5 and 7-9 remain and claim 26 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a method for accumulate C20 polyunsaturated fatty acids in transgenic plant expressing nucleotide sequences encoding SEQ ID NO: 2, 4 and 6, does not reasonably provide enablement for any transgenic plant expressing any delta-9-elongase, any delta-5- and delta-8-desaturase. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims, for the reasons of record stated in the Office action mailed January 23, 2008. Applicants traverse in the paper filed March 20, 2007. Applicants' arguments have been fully considered but were not found persuasive.

Applicants present similar arguments to those in the response filed 11/9/07, therefore for the similar reasons as discussed in the previous office action, the rejection is maintained.

Further, Applicants argue that Table 1 at page 50 clearly demonstrates that the triple transformed plants produced not only C20 polyunsaturated fatty acid but also various other compounds including C16 and C18 fatty acids as enumerated in Table 1 (response, page 7, last paragraph). However, in Table 1, it shows that the triple transgenic plant produced less C16 and C18 fatty acids such as 16:0, 16:1, 18:0, 18:2n-6 and 18:3n-3 than wild type control.